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PALESTINE REFUGEE PROBLEM

LAND TENURE IN THE MIDDLE EAST

Since the dawn of human history cultivation of the soil has been carried out along the Mediterranean shores and in the great river valleys of the Middle East. People in that region have depended mainly upon the good earth for a living and for the development of their cultures. Land ownership has been of paramount significance, and consequently a well-defined system of land tenure had already been developed at the time of Roman occupation. When the Arabs took over, during the seventh century A.D., they adopted the then existing system and introduced into it some modifications as demanded by their religious, political, and tribal organizations. Further minor modification was introduced by the Turks. Recently some attempts at reforming the system have been made by the various governments of the region. More effective measures have to be taken, however, if the serious problems resulting from land-tenure practices in the Middle East are to be solved. Some of these arise from feudal tenancy, fragmentation of holdings, and an ineffective form of communal ownership.

The Region and Its People

From a cultural and geographical point of view, the region under consideration may be regarded as the heart of the Arab Middle East. It is a functional socioeconomic unit, despite the fact that it consists of five political entities - Palestine, Trans-Jordan, Lebanon, Syria, and Iraq. Its boundaries are geographically determined as follows: On the north by the Taurus Mountains of Turkey; on the east by the Kurdistan Mountain Range; on the south by the sandy Deserts of Sinai and Arabia and by the Persian Gulf; and on the west by the Mediterranean, forming a coast line of about 750 kilometers (466 miles). The total area of the region is about 767,000 square kilometers (296,000 square miles), of which not more than 84,000 square kilometers (32,000 square miles) are under cultivation.

Moving from the seashore inland, one encounters a variety of topographical features. The coastal plain is a narrow strip of land varying in width from a few meters to a few kilometers, most of which is below the altitude of 200 feet. It is composed mainly of fertile alluvial soil. The main mountain range rises abruptly from, and runs parallel with, the coastal plain, reaching its greatest elevation of some 12,000 feet in Lebanon.

Farther east lies the Anti-Lebanon Range, which runs parallel with the coastal range and is separated from it by the high Plateau of Biqa'.

1/ The discussion includes Syria, Lebanon, Trans-Jordan, Iraq, and Palestine, but not the Jewish settlements in Palestine.

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The third significant mountain area is that of northeastern Iraq, which is a continuation of the Taurus and Kurdistan Ranges. The remaining greater portion of the region consists of extensive interior plains and high plateaus, partially drained by rivers or streams. In climate also there is marked variation. In general the temperature increases and the rainfall decreases (from about 35 inches to 6 inches a year) depending upon the distance from north to south and from west to east. In the mountain areas winters are snowy and cold, with high precipitation, whereas summers are cool and dry. At the other extreme is the subtropical climate of the Jordan depression between Palestine and Trans-Jordan.

About 10,000,000 people live within the boundaries of this region. Here also lived their ancestors for a great many centuries - since the dawn of human history. For generation after generation they tilled the soil, adjusted their way of life to the demands of climate and topography, and passed on their experience to their progeny. Nation after nation arose in this most strategic part of the world; conquest followed conquest, yet the tillers of the soil were able to absorb the shocks and go on with their patient work. In a study of the ecological pattern in the area, with attention focussed on its land-tenure system, one must keep in mind that the roots of such a system reach far into the past. It is a heritage toward which many cultures have contributed, with the influence of the Arabs predominating.

The first feature to be discerned in this respect is the pattern of population distribution over the area. The accompanying table gives a clear picture of the situation.

The degree of concentration is fairly high in the fertile Tigris-Euphrates Valley, very high in the less fertile land of Palestine, and extremely high in the rugged mountains of Lebanon. Obviously, the geographical factor alone cannot explain this divergence. Other factors -- social, cultural, and political--are involved and must be taken into consideration. A second feature is that the great majority (more than 75 percent) of the inhabitants are directly dependent upon agriculture for a living. A third feature, which has direct bearing on the land-tenure system, is the fact that agricultural settlement in that part of the world has been of the nucleated-village type. All farmers, together with their livestock, live in villages, away from their fields. The significance of this factor will be indicated below. Finally it must be observed that agriculture among these people is much more than an economic activity; it is a way of life. Consequently, their system of land tenure cannot be analyzed and understood as such in isolation; it has to be approached in the light of its organic relationship with other aspects of the culture, especially religion and the family.

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TABLE 1. Area and population density for certain countries of the Middle East, 1940

Country	Area: Total		Area: Cultivated		Population
	1,000 sq. kilometers	1,000 square miles	1,000 sq. kilometers	1,000 square miles	Millions
Palestine	27	10	9	3	1.55
Trans-Jordan	90	35	5	2	0.35
Lebanon	10	4	2	1	1.00
Syria	190	73	18	7	2.00
Iraq	450	174	50	19	4.00
Total	767	296	84	32	8.90

Country	Population density: Total Area		Cultivated Area	
	Per sq. kilometer	Per sq. mile	Per sq. kilometer	Per sq. mile
Palestine	58	150	172	445
Trans-Jordan	4	10	70	181
Lebanon	100	259	500	1,295
Syria	11	28	111	287
Iraq	9	23	80	207
Total	11.6	30	106	275

Types of Land Tenure

In the seventh century A.D. the Arabs conquered the Romans and occupied their territory in the Middle East. The native population, mostly agricultural, remained on the land and were ultimately largely amalgamated with the conquering Arabs. Intermarriage and conversion into Islam were widespread, and the Arabic language was adopted completely. Whatever type of land tenure the Arabs encountered among the natives, they accepted it and modified it according to their religious laws and tribal customs. Several hundred years later, the Turks took over from the Arabs, adopting their religion and a great deal of their culture. They accepted the Arab system of land tenure and introduced into it some modifications. Such is the main background of the system that prevails today in the various countries of the Middle East.

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Milk Land[2] This is the land that is held in "fee simple," to which the owner has full and free title and can do with it whatever he wishes. If the Arab conquest is taken as a point of departure, two sources of origin for this type of land ownership may be traced. The first is the Mulk land that was already in existence when the Arabs took over. In general they left the native owners unmolested. They distinguished, however, between Muslim and non-Muslim owners. The property of the former was designated as Ushriyah (paying tenth of the produce) and that of the latter as Kharajiyah (paying tribute). The tribute was either in proportion to the produce, but not less than a tenth, or a fixed amount. At present practically no distinction is made between these two categories. The other source of Milk land has been the practice by Arab rulers and the Turkish Sultans of granting land from the state domain to soldiers, tribal chiefs, or local leaders in compensation for military or political services. This practice gave rise ultimately to the prevalent feudal system of today. Except in Lebanon, Mulk tenure is limited to a small portion of the land. For example, in Iraq not more than 2 percent of the land is pure Mulk. This is also true of Trans-Jordan, whereas the proportion may be slightly higher in Palestine and Syria.

Miri Land[3] Two main categories may be distinguished under this type: (1) Pure Miri, or that which is completely owned by the state; (2) Tabu Miri, or that which is leased out indefinitely to an individual. In other words, this type refers to arable land that is owned by the sovereign or the state. The original source of this type was the land acquired by conquest, which was not claimed by cultivators. Land that was confiscated for any reason, or unclaimed Mulk land, provided later sources. The cultivator of Miri is virtually its owner, for he can cultivate it as he wishes, bequeath it to his legal heirs, and transfer it. There are, however, certain conditions with which he must conform. One of these is that if the land is left without cultivation for more than 3 consecutive years, it will become Mahlulah (free of lease) and will revert to the state as Pure Miri. The state is then free to lease it out to the highest bidder, unless the possessor wishes to redeem it by paying a regular fee. Previously another condition provided that no trees could be planted or buildings erected on such land, excepting with the permission of the sovereign. Later this condition was neglected, with the result that any such trees or buildings are owned as Mulk, and the land is owned as Miri. Thirdly, the owner of Miri cannot bequeath it through a will, nor-- excepting with the approval of the state--can he change it to Milk or dedicate it for religious or charitable purposes. Payment for the possession and use of Miri is made in two forms: (1) By regular fees at the time it is leased or transferred and (2) a yearly tithe or tax. When there are no heirs to claim the land, it reverts to the state. By far the greater portion of land in the countries under consideration is of this category. It amounts in Iraq, for example, to about 95 percent of all arable land.

2/ From the Arabic root verb Maleka, to own freely and absolutely.
3/ The land that belongs to the emir or ruler.

Waqf Land The Arabs, since the beginning of their civilization, of which their religious message was the main pillar, developed the practice of dedicating land for religious or charitable purposes. In almost every village one encounters such dedicated land, which is owned by a church, a monastery, or a mosque. One finds, upon investigation, that in each case the dedication was made by the sovereign, a whole community, or an individual who hoped thereby to please the Almighty and invoke his blessings and mercy upon himself and his family. The property offered may be a building, an open field, a whole orchard, or a few trees. The name applied to this form of ownership is Waqf (from the Arabic root verb Waqafa, meaning to stop or to hold steady and unchanged). Its significance may be indicated by the fact that the old Ottoman government had a special ministry to handle the complicated affairs of the Waqf in various parts of the empire. Two f[illegible] of Waqf have distinguished, Sahih (true) and Ghair Sahih (untrue, [illegible]e first refers to Milk land that has been dedicated in the manner disc[illegible]d above. It is true in the sense that the land offered becomes the absolute property of the religious or charitable organization concerned. No other land but Milk can be changed to true Waqf. On the other hand, Miri land can be dedicated only as untrue Waqf, which means that dedication involves usufruct only and not ownership. Even with such limitation, consent of the state, as the ultimate owner, must be secured first. The dedication of land as true Waqf is perpetual. This means that it cannot be exchanged or sold except when replacement is assured. Sometimes a Waqf is dedicated for the benefit of one's heirs, either perpetually or for a definite period, after which it is turned over to religious or charitable use. Finally, it should be noted that the management of Waqf affairs, including court decisions, is mainly in the hands of religious authorities.

Matrukah Land[4] Every village owns in common some land which is used by the community as a whole for a specific purpose. This may be in the form of grazing ground, local roads and paths, threshing floors, community wood or an open space for village gatherings.

Mawat Land[5] This is waste or uncultivated land that is not owned or claimed by any individual or community. It is something of a "no man's land," lying outside the traditional boundaries of the village territory. Its location was previously determined by the distance beyond which a voice shouting from the village proper could not be heard. At present this distance is set at 1.5 miles.

Masha' Land[6] In Lebanon, ownership of land by individual family units is the rule, whereas in Palestine, Syria, and Iraq, a system of community ownership prevails. One can easily see in it a carry-over from the Bedouin tribal organization. In fact, one can still observe this

4/ Meaning literally "left over."
5/ Meaning literally "dead."
6/ From the Arabic root verb Sha's, meaning to be shared in common.

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transition in operation on the rim of the desert. Originally the Sheikh, or Headman, or a newly settled village divided its land into so many shares (in Arabic Asshum, singular Sahm) and assigned an appropriate number of these to each family. Thus what each family owned was a certain share of the common territory and not any specific plot. As generation followed generation, the shares owned by a family were divided and subdivided among its legal heirs. This process continued to such an extent that at present an individual may be the owner of a fraction of several fractions of a share. On the other hand, through marriage, purchase or other means, another individual may come to own several whole shares. In some villages a different method is used; at regular intervals the land is divided into as many shares as there are males, including infants.

As regards the interpretation of share ownership in terms of cultivating the land and reaping its produce, the normal procedure is to divide the village territory into a few sites, according to the quality of the soil, and then assign a portion of each site to each share. Sometimes a whole site is given to each joint family unit or kinship group (in Palestine called Hamulah) which takes care of dividing it among its members. At intervals of from 1 to 5 years the land is repartitioned.

CONDITIONS AND PROBLEMS ASSOCIATED WITH LAND TENURE

Tenancy

Although no accurate figures are available, the belief is that not less than 50 percent of the arable land in the region under consideration is cultivated under the tenancy system. Such a situation is expected in view of the fact discussed above, that by far the greater portion of land is of the Miri type. It was the common practice of rulers to offer tracts of this land to local chiefs in compensation for their military or political services. The chiefs in their turn leased the land out to tenants to work it for them. From such beginnings the present system developed. Later, in many cases, whole villages would transfer the land they owned to influential landlords, with a view to securing protection. Gradually such villagers would sink to the level of tennants.

Another equally important factor in the development of tenancy has been the seemingly endless process of transition from nomadism to settled agricultural life by the desert Bedouin. A tribe, in its nomadic state, under the leadership of a Sheikh, owns collectively grazing rights over a certain territory. When settlement is begun, it is natural that the tribal organization, including the leadership of the Sheikh, is maintained. The cultivated land is then owned collectively, with the Sheikh assigning various families shares in it but no permanent plots. Each family gives him a certain portion of the produce. By gradual steps, the Sheikh becomes a landlord, and the members of the tribe assume the status of tenants.

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Several problems are associated with this system of land exploitation. One of these is the meager portion of produce received by the tenant. This differs from country to country and from locality to locality within the country, depending upon whether or not the tenant supplies the seed, draft animals, and other equipment. In general it has been estimated that the produce is divided as follows: 10 to 25 percent for the Government, depending upon the category of land; 40 to 60 percent for the landlord; 25 to 50 percent for the tenant. The inadequacy of the tenant's share, which in most cases is his only source of income, is readily apparent from his extremely low standard of living.

Another problem is the lack of effective measures by which a minimum of primary rights can be guaranteed the tenant. Usually, he may be evicted by the landlord without notice. As a rule, no compensation is paid him for improvements he makes or for the losses he incurs when evicted. Also there is no regulation by which the landlord is obliged to supply tenants with a minimum standard of housing. Furthermore, they often need credit to tide them over until the following crop is ready and to meet emergencies. This credit is supplied normally by the landlord, sometimes at exorbitant rates of interest. Consequently, the tenant is almost continuously encumbered by debt, which in many cases he passes on to his children.

Then there is the problem of the exploited land itself. The absentee landlord has no real interest in increasing or even maintaining the productivity of his soil. His main concern is well expressed in an Arabic village saying, "He is after the shallow piaster." He tries to get from his land and his tenants as much as he can, with the least exertion or effort. Consequently, no intensive and diversified cultivation is practiced, and about half the land is left fallow each year in order to maintain a certain degree of fertility. On the other end of the deal is the tenant who is even less interested in keeping the soil in good shape or in improving his agriculture. The land does not belong to him, and he knows that the fruit of any improvement introduced by him will mostly go to the absentee landlord.

During the old Turkish regime there was no law to provide for the protection of the agricultural tenant. In recent years the various governments concerned have become to some extent conscious of the urgency of the problem, and some effort was exerted with a view to finding a solution. The Government of Palestine has taken the lead in this respect. Ordinances providing for the following measures were enacted: (1) Restrictions on the landlord's right to evict tenants. (2) Adequate compensation for losses resulting from eviction. (3) Compensation for improvements made by the tenants on the land. (4) Restriction of the landlord's right to increase the rent. (5) Provision for the security of the evicted tenant in the form of a subsistence plot. Such measures, however, have been found extremely difficult to put into effect. The letter of the law has been easily evaded. More serious action is necessary.

Scattered Holdings

Family life in the Arab culture, especially among the village folks, has been greatly emphasized. One may observe it in their strong desire for children and in their attachment to a specific locality, which attachment serves to keep members of the family or the kinship group close together. Where a village is newly settled, it may be presumed that there will be enough land to take care of the needs of the few families or kinship group. Each of these is given an appropriate portion in each of the four or five sites into which the village territory is divided. With the appearance of each new generation, however, the family property is divided and subdivided into as many equal parts as there are male children. Each one of these, in his turn, tries to rear a family on the dwindled plots he has inherited. Also, many times purchase and inheritance from the mother's side take place. Consequently, almost every village has come to offer at present a striking picture of a conglomeration of dwelling places, where farmers and animals live, and a surrounding farming territory that is divided by fences, hedges, ditches, and paths into a great number of small and irregularly shaped plots. Within this territory a farmer, for example, may own about 20 acres, divided into 10 to 15 plots, and scattered in all directions from the village proper. Obviously such a practice is not conductive to high agricultural efficiency.

Communal Ownership

This form of land tenure was described above in detail. The main problem it involves is that it tends to deprive the farmer of the initiative for agricultural improvement. This is the result of its inherent character, which is neither individualistic nor genuinely collective. Possibly at first, when the Bedouins began settling down on the land, Masha' was an effective method of agricultural exploitation that fitted into the tribal organization. Today, however, it is altogether antiquated. The Masha' farmer, who knows that in a year or two he will not be cultivating the same piece of land, does not feel inclined to fertilize it, to plant it with fruit trees, or to make permanent improvements. "Why should someone else reap the benefit of my work?" he reasons. For this reason, native and foreign experts have agreed upon condemning Mashd as the greatest obstacle to agricultural rehabilitation in the Middle East. A serious attempt at surveying and partitioning such land has been in progress for the last 10 years.